**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929**

**WP(C).No. 16825 of 2004(C)**
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**PETITIONER:**
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**KUMARI N. SUBHADRA, D/O. LATE KRISHNAN NARAYANAN, CHENETHAYIL HOUSE, PARAVOOR, PUNNAPRA P.O., ALAPPUZHA.**

**BY ADV. SRI.K.K.SATHEESH**

**RESPONDENTS:**
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1. **UNION OF INDIA REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI-110 003.**

2. **STATE OF KERALA, REPRESENTED BY THE SECRETARY, GENERAL ADMINISTRATION (FFP.A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

**BY ADV. SRI.S.PRASANTH, ADDL.CGSC**
**SRI.P.R.RADHAKRISHNAN, CGC**
**GOVERNMENT PLEADER SRI.K.V.MANOJ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C) NO.16825/2004**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF SSS PENSION DT. 12.2.04.**

**EXT.P2:- COPY OF THE AFFIDAVIT DULY ATTESTED BY THE JUDICIAL 1ST CLASS MAGISTRATE- II, ALAPPUZHA DT. 12.2.04.**

**EXT.P3:- COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR, AMBALAPUZHA DT. 6.2.04.**

**EXT.P4:- COPY OF THE COMMUNITY CERTIFICATE ISSUED BY THE TAHSILDAR, AMBALAPUZHA DT. 4.2.04.**

**EXT.P5:- COPY OF THE NARC ISSUED BY THE CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA.**

**EXT.P6:- COPY OF THE PKC ISSUED BY SRI.KUNJAN SUKUMARAN DT. 18.4.98.**

**EXT.P7:- COPY OF THE PKC ISSUED BY SRI.H.K.CHAKRAPANI DT. 15.1.04.**

**/TRUE COPY/**

**P.S. TO JUDGE**

**tss**

**T.R. Ramachandran Nair, J.**

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**W.P.(C).NO.16825 of 2004-C**

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**Dated this the 31st day of July, 2007**

**JUDGMENT**

The petitioner is the unmarried daughter of a freedom fighter, viz., Shri Krishnan Narayanan who had actively participated in Punnapra – Vayalar Movement. The above movement is recognised by the Government of India as a part of the National Freedom Struggle with effect from 20.1.1998, for the grant of Swatantratha Sainik Samman Pension. It is averred that on account of his participation in the said struggle, an arrest warrant was issued against him by the Special Magistrate Court, Alappuzha in case No.P.E.7/1122 M.E. In order to evade arrest, he had gone underground for a period of six months from 7.3.1122 M.E. To 6.9.1123 M.E. On the very same set of facts, he had filed an application for Kerala Freedom Fighters' Pension which was granted as per proceedings of the District Collector, Alappuzha as per order No.R.Dis.37281/74/F6 dated 29.10.1974 with effect from 1.4.1974. It is also the case of the petitioner that after the death of her father on 23.5.1995, her mother Smt. P.K. Narayani was granted the benefit of the aforesaid pension as per proceedings of the District Collector, Alappuzha vide No.H4.65675/95

dated 19.1.1996. After her death, the petitioner is getting the benefit of dependent family pension under the said scheme.

2. Ext.P1 is the application submitted by the petitioner claiming pension under the Central Scheme. Ext.P2 is the affidavit produced along with the application and Ext.P3 is the certificate of the Tahsildar, Ambalapuzha certifying that she is unmarried. Ext.P4 is the community certificate showing that she belongs to Hindu-Paravan community, a scheduled caste. Ext.P5 is the Non-availability of Records Certificate (NARC) in Case No.P.E.7/1122 M.E. Issued by the Chief Judicial Magistrate Court, Alappuzha.

3. The petitioner has produced along with her application, Exts.P6 and P7 certificates issued by prominent freedom fighters Shri Kunjan Sukumaran and Shri H.K. Chakrapani. These personal knowledge certificates are issued evidencing the fact that the petitioner's father had remained underground for more than six months for the period from 7.3.1122 M.E. To 9.9.1123 M.E. The petitioner approached this court when there was no action on the part of the respondents to grant the pension.

4. As per the S.S.S. Pension Scheme, the application has to be forwarded to the Government of India along with the recommendation by the State Government and this was the only reason for the Central

Government in not considering the application of the petitioner.

5. A counter affidavit has been filed on behalf of the second respondent. In the counter affidavit, the reason for not recommending the application of the petitioner is that Ext.P5 is not a valid document, that in Ext.P6 the certifier has not mentioned the case number the petitioner's late father was involved and that Ext.P7 is not reliable.

6. The admitted facts will show that her late father was a recipient of State Freedom Fighters' Pension. It cannot be disputed also that the same was granted to him under the very same set of facts and based on the very same documents. Therefore, the approach made by the second respondent while considering the case of the petitioner is clearly faulty and is without any application of mind to the relevant facts and materials. It is clear that the approach made by the second respondent is too technical. Going by the dictum laid down by the Supreme Court in **Gurdial Singh v. Union of India and others** ((2001) 8 SCC 8) a liberal approach has to be made by the authorities in such circumstances. A similar issue was considered by this court in O.P. No.3868/2002. Therein also the applicant was granted the benefit of pension under the State Scheme. After referring to the contentions raised by the parties, His Lordship was pleased to hold that in

view of the fact that the State Government had sanctioned pension, the statement of the petitioner therein that he had undergone imprisonment for various spells, cannot be disbelieved. A similar issue arises here also. It is a case where based on the same period during which the petitioner's father had remained underground, he had been granted State pension and the petitioner is a beneficiary of the same even now. Of course, the grant of S.S.S. Pension is not automatic on it, but it is a matter to be decided by the Union of India after considering the entire materials. The State Government cannot prejudge the issue and refuse to forward the application and materials to the Union of India. The reasons that are discernible from paragraph 6 of the counter affidavit to reject the application as stated above, are that the case number relating to the petitioner's father is not clear from the personal knowledge certificate issued by Shri Kunjan Sukumaran. Merely for that reason, the application cannot be rejected because the petitioner has clearly stated the case number in her application and in the personal knowledge certificate issued by Shri H.K. Chakrapani the case number is clearly mentioned. As regards the averment that Ext.P5 is not acceptable, the authority has not actually considered the effect of Ext.P5. Ext.P5 is an application submitted by the petitioner before the Chief Judicial Magistrate's Court, Alappuzha referring to the case number as P.E.7/1122.

It is clearly stated that the records are not available since it has been destroyed as per rule. The insufficiency of the above is attributed due to the fact that "there is nothing to show that the particular case is related to that court." The said reason appears to be without any justification as the application for copy was submitted before the court by the applicant for a particular document relating to that case. I see no justification to uphold the said reason stated in paragraph 6. The other reason stated in paragraph 6 of the counter affidavit is that the certificate issued by Shri H.K. Chakrapani is not reliable. A learned judge of this court in the judgment in O.P. No.26694/2003 which is an original petition filed by Shri P.K. Chellappan, has directed the Government to consider the application of the petitioner along with the said certificate. It is stated by learned counsel for the petitioner that subsequently the Government had granted pension to the said applicant as per Government Letter No.63819/FFP.B3/05/GAD dated 30.10.2006. Therefore, the Government cannot take a different stand in respect of a freedom fighter who is claiming benefit under the very same movement. Therefore, for all these reasons, the stand taken by the second respondent in this case cannot be accepted. It is clear that the certificates are relevant and clearly establish the claim of the petitioner in relation to her husband especially in the light of the fact that she is even now being paid

the State Pension and her late father was a recipient of the said pension.

8. The first respondent in their counter affidavit has averred that the Central Government is awaiting the report of the State Government along with the application.

8. Therefore, the writ petition is allowed. The second respondent is directed to forward the application submitted by the petitioner along with the enclosures duly recommending the same, for grant of S.S.S. Pension, within a period of two months from the date of receipt of a copy of this judgment. On receipt of the same, the first respondent will process the same and pass appropriate orders on its merits within a further period of three months thereafter.

**(T.R. Ramachandran Nair, Judge.)**

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